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IN THE

Supreme Court of the United States

NO. 363, OCTOBER TERM, 1962

PAUL GINSBURG, Petitioner,

v.

HON. DAVE W. LING, Judge of the United States District Court for the District of Arizona at Phoenix, Respondent.

PETITION FOR REHEARING

On Petition for Writ of Certiorari, and on Motion to Remand, to the United States Court of Appeals for the Ninth Circuit.

PAUL GINSBURG,
Counsel for Petitioner.

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition for rehearing of Paul Ginsburg, petitioner, respectfully represents:

1. On November 5, 1962, this Honorable Court entered an Order denying the unopposed Petition for Writ of Certiorari. It is apparent from the said Petition that the respondent herein arbitrarily and discriminatorily refused a Motion in the District Court which sought the adjudication of the unadjudicated issue of lack of consideration for an alleged oral agreement. In the Statement of the Case contained in the Petition reference was made to a prior proceeding in this Honorable Court at No. 551, October Term 1960, wherein review was unsuccessfully sought of other erroneous Judgments herein

on such grounds as lack of jurisdiction and the fraud and misconduct of your petitioner's adversaries.

2. On December 10, 1962, this Honorable Court entered an Order denying the petitioner's unanswered and unopposed Motion to Remand, which sought directions that the United States District Court for the District of Arizona at Phoenix adjudicate the issues involved herein, and particularly the issue of lack of consideration. Therein your petitioner relied upon the proposition that since this Honorable Court would not review and reverse, it certainly would review and remand. This proposition was based upon the premise that the judicial and constitutional mandate to this Court to protect and enforce the petitioner's right to due process of law required a review and reversal of the judgment sought to be reviewed herein; and that this Court's refusal to do so, left it no legal alternative but to review and remand on the premise that the only apparent justification for denial of certiorari was the point that the instant issue of lack of consideration was not adjudicated below, and reviewing courts do not review and adjudicate unadjudicated issues. Thus, in order to afford petitioner the relief to which he is entitled through adjudication of the issues involved, but which he was denied in the lower Courts, this Honorable Court would insure his constitutionally guaranteed rights by remanding with instructions that the District Court adjudicate those issues. Otherwise, these important issues will remain unadjudicated even if the petitioner were again to move the District Court to do so. The obvious result would be a positive denial of any relief whatever, without petitioner's ever having had a single chance.

3. In the case of *Dick v. New York Life Insurance Co.*, 359 U.S. 437, both the Opinion of the Court by Mr. Chief Justice Warren and the dissenting Opinion by Mr. Justice Frankfurter support the point that certiorari should be granted herein. Therein the Opinion of the Court covering ten pages (437-447), reversing the judgment sought to be reviewed, simply involved the question of whether the Eighth Circuit properly held that it was error to submit to a jury's determination whether an insured died as a result of suicide or accident. There were no important issues, as previously raised herein, like fraud, illegal transfer to a District where the action could have been brought, deprivations of due process of law, adjudications in advance of the right to be heard and preventing records for review, entry of affirmative judgment in an interpleader action, and the resulting conflicts to be resolved; as well as the issue of lack of consideration currently raised herein and the conflicts resulting therefrom which should be resolved.

4. The said dissenting Opinion by Mr. Justice Frankfurter, who would have affirmed, was even longer (447-463) than the Opinion of the Court, and contained a very interesting history of the Evarts Act and the "Judges' Bill". According to a pronouncement by Mr. Chief Justice Taft (452), a litigant is entitled to two chances,—one in the District Court and another in the Court of Appeals. In the instant cause, it is apparent from the record that your petitioner never had a single chance on any issues in the lower Courts. When the said pronouncement added that this Supreme Court's function is to preserve uniformity of decision among the

intermediate courts of appeals, it is respectfully submitted that upon the instant rehearing, this Honorable Court should at least insure the petitioner's right to a first chance, if it declines to go so far as to resolve the conflicts entered herein.

5. The said dissenting Opinion also contained an important pronouncement (455) by Mr. Chief Justice Hughes, which supports the right to certiorari herein because the questions presented are not questions of fact, but are questions of law. Because the questions presented herein raise procedural and substantive issues of law, and not of fact, the instant Petition should normally receive favorable consideration under the usual and accepted practice.

6. On November 28, 1962, while the said Motion to Remand was pending and undetermined, upon the application of your petitioner Mr. Justice Douglas entered an Order extending the time for filing a petition for rehearing on the denial of certiorari to and including the 29th day of December, 1962. Because the denial of the Motion to Remand was entered on December 10, 1962, the time within which a petition for rehearing thereon may be filed includes the 4th day of January, 1963. Therefore, this Petition for Rehearing on both denials of certiorari and remand, is timely.

7. The issues involved in this cause are of extreme importance to the public, most of whom are holders or beneficiaries of policies of insurance. At stake herein, is whether or not insurance contracts can arbitrarily and discriminatorily be treated as mere "scraps of paper"; or whether their sanctity shall be respected

and the purchasers and beneficiaries thereof will know that their legal rights therein will be upheld under the law; and that nobody can defraud them out of the proceeds, when due, through the operation of our too-often-experienced government by men.

8. Important as this matter is to your petitioner, it should be plain to this Honorable Court that his interest is incidental and subsidiary to the interests of the public. Petitioner is thus justified in arguing that this Honorable Court should not be completely influenced by its policy of disregarding cases involving the property rights of individuals, whereby it segregates and discards their causes, restricting the exercise of its sound judicial discretion to matters in the public interest only.

9. If upon rehearing, this Honorable Court does not review and reverse or review and remand, then it cannot be denied that your petitioner, who has never had a chance in any of the lower Courts, has been rendered a litigant without a Court.

10. Should this Honorable Court deny the instant Petition for Rehearing, your petitioner will be obliged to cease and desist from further seeking the protection and enforcement of his rights guaranteed by the Constitution and laws of the United States, of which he has been unjustly, arbitrarily and discriminatorily deprived herein; unless through his innate, old-fashioned, worn-out American trait of perseverance where the provisions of our Constitution are concerned, and the slogan of "Equal Justice Under the Law" is hailed, your petitioner will exercise his "guaranteed" right to proceed further be-

fore respondent District Judge Dave W. Ling who is neither qualified nor competent in this matter to issue anything but another two-word order, "Motion denied", unaccompanied by an opinion. Thereupon your American petitioner will again appeal to the Court of Appeals for the Ninth Circuit which, in this proceeding, is not qualified or competent to issue anything but a two-word order, "Appeal dismissed", unaccompanied by an opinion. After your petitioner shall again have thus been denied his right to a chance in the lower Courts, what will the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States do, upon the presentation of a petition for writ of certiorari thereon? It is respectfully submitted that if they then would be convinced that your petitioner should finally be entitled to relief, they certainly should come to that conclusion now, because what has been related by your petitioner herein as the actions he can expect from the lower Courts, are precisely what he is justified in arguing will happen.

11. It necessarily follows from the foregoing, that the petitioner is positively entitled under the Constitution and laws of the United States to review and reversal or review and remand; and that, therefore, this Petition for Rehearing should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner.

Dated: 24 December 1962.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.